

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD SPRUEL,

Plaintiff,

v.

STATE OF WASHINGTON,

Defendant.

CASE NO. C07-432-MJP-JPD

REPORT AND RECOMMENDATION

On March 22, 2007, plaintiff Richard Spruel presented to this Court for filing a civil rights complaint under 42 U.S.C. § 1983 together with an application to proceed with this action *in forma pauperis*. Plaintiff appeared to allege in his complaint that his constitutional rights were violated by the State of Washington during the course of criminal proceedings which resulted in plaintiff's 1992 King County Superior Court conviction and/or during the course of criminal proceedings which resulted in a 2006 finding that plaintiff had violated the conditions of his release. Plaintiff identified the State of Washington as the only defendant in this action.

On April 30, 2007, plaintiff's application for leave to proceed *in forma pauperis* was granted and his complaint was filed. (*See* Dkt. Nos. 4 and 5.) On the same date, this Court issued an Order declining to serve plaintiff's complaint and granting him leave to amend. (Dkt. No. 6.) Plaintiff was advised therein that his complaint was defective because (1) the State of Washington could not be

REPORT AND RECOMMENDATION

PAGE - 1

1 sued in an action brought under § 1983, and (2) plaintiff's claims challenging his prior criminal
2 proceedings appeared to be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). (See Dkt. No. 6 at 2-
3 3.)

4 Plaintiff was granted thirty days within which to file an amended complaint curing the specified
5 deficiencies, and was advised that the Court would dismiss this action as frivolous pursuant to 28
6 U.S.C. § 1915(e)(2) if he failed to timely file an amended complaint. (*Id.* at 3.) Plaintiff subsequently
7 moved for an extension of time to file his amended complaint. (Dkt. No. 7.) This Court granted the
8 requested extension and advised plaintiff that any amended complaint must be filed not later than
9 August 1, 2007. (Dkt. No. 9.) To date, plaintiff has filed no amended complaint.

10 When a complaint is frivolous, malicious, fails to state a claim on which relief may be granted,
11 or seeks monetary relief against a defendant who is immune from such relief, the Court may dismiss an
12 *in forma pauperis* complaint before service of process under 28 U.S.C. § 1915(e)(2)(B). Because
13 plaintiff's original complaint failed to identify either a proper defendant or a cognizable claim for relief,
14 and because plaintiff failed to amend his complaint to correct these deficiencies, this Court
15 recommends that plaintiff's complaint, and this action, be dismissed without prejudice pursuant to 28
16 U.S.C. § 1915(e)(2)(B). A proposed order accompanies this Report and Recommendation.

17 DATED this 17th day of October, 2007.

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20 JAMES P. DONOHUE
United States Magistrate Judge